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VS.

BRIAN FIERRO,

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UNITED STATES DISTRICT COURT **DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA, Case No.: 2:09-cr-00240-RLH-PAL-1 Respondent/Plaintiff, ORDER (Protective Abridged Motion to Vacate – #119)

Before the Court is Petitioner/Defendant Brian Fierro's ("Fierro") Notice of Filing of Second or Successive Petition in the Ninth Circuit and Filing of Protective Abridged Motion to Vacate Under 28 U.S.C. § 2255 (#119) ("Motion") filed on June 23, 2016. The United States did not file a response.

Petitioner/Defendant.

In the Motion Fierro notifies the Court that he filed an application in the Court of Appeals for the Ninth Circuit ("Circuit Court") for leave to file a second or successive § 2255 motion in light of the Supreme Court's recent decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015). Additionally, Fierro requests that this Court issue an order holding his Motion in abeyance and deeming the Motion filed *nunc pro tunc* to the date of the original filing *See* First First Am. General Order 2015-03 (D. Nev. April 27, 2015); see also Orona v. United States, No. 16-70568, 2016 WL 3435692, at *2 (9th Cir. June 22, 2016) (per curium) (holding that "the filing of a second or successive application in our court tolls the 1-year statute of limitations ... until our court rules on the application"). The Court will grant Fierro's Motion.

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Petitioner/Defendant Fierro's Notice of Filing of Second or Successive Petition in the Ninth Circuit and Filing of Protective Abridged Motion to Vacate Under 28 U.S.C. § 2255 (#119) is GRANTED. Fierro's Abridged Motion to Vacate Under 28 U.S.C. § 2255 is stayed pending the Circuit Court's consideration of his application to file a second or successive § 2255 motion.

IT IS FURTHER ORDERED that the Motion preserves the filing date of June 23, 2016 for statute of limitations purposes under *Johnson v. United States*, 135 S.Ct. 2551 (2015).

Dated: July 18, 2016

ROGER L. HUNT UNITED STATES DISTRICT JUDGE

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